Levy Ratner

Attorneys at Law
80 Eighth Avenue, 8th Floor
New York, NY 10011-7175
o 212.627.8100
f 212.627.8182
levyratner.com

December 21, 2020

BY ECF

Hon. John G. Koeltl
United States District Judge
Daniel Patrick Moynihan
United States Courthouse
500 Pearl St.
New York, NY 10007-1312

Re: 1199SEIU United Healthcare Workers East v. PSC Community Services, et al., 20-cv-03611 (JGK)

Dear Judge Koeltl:

This firm represents petitioner 1199SEIU United Healthcare Workers East ("1199") in the above-referenced matter. We submit this supplemental briefing to address the Court's question during oral argument on December 14, 2020 regarding whether there is a finality requirement in cases seeking confirmation of a labor arbitration award under the Labor Management Relations Act, § 301.

Under Morelite Const. Corp. v. New York City Dist. Council of Carpenters, 748 F.2d 79 (2d Cir. 1984), the requirements of the Federal Arbitration Act were often imported into cases involving labor arbitration awards under § 301. In Coca-Cola Bottling Co. v. Soft Drink and Brewery Workers Union, 242 F. 3d 52, 53 (2d Cir. 2001), the Second Circuit made clear that the FAA is not directly applicable to cases arising under § 301. However, subsequently, it expressly declined an invitation to overrule Morelite, stating that the FAA continued to be "a source of principles and guideposts in developing federal common law under section 301." Ecoline, Inc.v.

Local Union No. 12 of Intern. Ass'n of Heat and Frost Insulators, 271 Fed. App'x 70, 71 n.2 (2d Cir. 2008). Very recently, while again noting that, technically the FAA does not apply in the LMRA context, the Circuit observed that, nevertheless, it has "substantially imported" the FAA into cases arising under § 301. A&A Maint. Enter., Inc. v. Ramnarain, --- F. 3d ----, 2020 WL 7379100, at *3 n.2 (2d Cir. Dec. 16, 2020).

Here, the parties agreed that two threshold issues should be bifurcated and submitted for final resolution by the Arbitrator prior to a hearing on and determination of the merits, because defining the scope of the claims before the Arbitrator was critical both for discovery and, later, for the hearing on the merits. See Fourth Blackstone Decl. ¶ 4 [ECF 153]; see Pfizer Inc. v. ICWUC/UFCW Locals 95C, No. 13 Civ. 1998 (AJN), 2014 WL 1275842, at *4 (S.D.N.Y. Mar. 24, 2014) (quoting Corporate Printing Co. v. NY Typographical Union No. 6, No. 93 Civ. 6796 (Sotomayor, J.), 1994 WL 376093, at *4 (S.D.N.Y. July 18, 1994) ("'[W]here the parties agree to submit to arbitration part of their dispute, with the intent that the arbitrator's decision be a final determination on the issue submitted, the arbitrator has the authority and responsibility to issue a final, albeit 'interim' award.'"). Moreover, the parties wanted clarity for the benefit of the state courts many of which have been improperly arrogating unto themselves the determination of arbitrability that, under Second Circuit and New York Court of Appeals precedent, is clearly a determination for Arbitrator Scheinman. Thus, to the extent that finality is a prerequisite to a § 301 claim, the April 17 Award was a final award.

For this reason and those previously set forth by 1199, this Court should grant the petition to confirm and deny the pending motions to intervene and dismiss and/or stay this proceeding.

Respectfully,
/s Laureve Blackstone
Laureve Blackstone

Cc: All Counsel via ECF